

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 306 of 1983  
WITH  
INCOME TAX REFERENCE No 308 of 1983

Hon'ble MR.JUSTICE S.M.SONI

and

Hon'ble MR.JUSTICE Y.B.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

SHANTILAL HEMATLAL (INDL)

Versus

COMMISSIONER OF INCOME TAX

-----

Appearance:

MR D.A. MEHTA, MR RK PATEL & MR BD KARIA for Petitioner  
MR BJ SHELAT FOR MANISH R BHATT for Respondent

-----

CORAM: S.M. SONI & Y.B. BHATT JJ.  
24th October 1996

ORAL JUDGEMENT

1. As identical questions of facts and law are

involved in both these References and the questions referred are also identical, they are disposed of by this common judgement.

2. In Reference Application Nos.167 & 168/Ahd/1982 arising out of ITA Nos.329 & 230/Ahd/81 covering the Assessment Years 1976-77 and 1977-78 the following questions are referred to us, for our opinion:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that on partial partition of the Larger H.U.F. the assessee could not form a smaller H.U.F. with his wife:"

"2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that it is necessary to blend with or throw into common hotch potch of the HUF for the purpose of claiming a smaller H.U.F. with the wife?".

"3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in not following the decision of Bombay Bench "B" which relied on the Allahabad High Court decision and in following the Special Bench's decision?"

2.1 In Reference Application Nos.169/Ahd/1982 arising out of ITA Nos.325/Ahd/81 covering the Assessment Years 1976-77 the following questions are referred to us, for our opinion:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that on partial partition of the larger H.U.F. the assessee could not form a smaller H.U.F. with his wife in respect of the same property which was partitioned i.e. Rs.3,14,125/-?".

"2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that it is necessary to blend with or throw into common hotch potch of the H.U.F. for the purpose of claiming a smaller H.U.F. with the wife?".

"3. Whether, on the facts and in the circumstances of the case, the Tribunal was

justified in law in not following the decision of the Bombay Bench-B which relied on the Allahabad High Court decision and in following Special Bench's decision?."

3. The applicants in both these References are real brothers and the questions referred to are arising out of partial partition of their bigger HUF of Hematlal Liladhar. On partial partition of the said bigger HUF both the applicants received their share in the immovable property and cash. It appears that both the applicants then effected a partial partition of their smaller HUF for the cash amount and the said cash amount came to be invested by respective assessee. Nature and character of the income from the said investment is the real question involved in these References.

4. To answer the questions referred to us, we find that the facts placed on record to appreciate the contentions are either incomplete or insufficient. To demonstrate the same we may narrate the fact in Reference No.306/83.

5. One Shri Hematlal Liladhar was being assessed as an HUF in the past. In S.Y. 2013, there was partial partition of the HUF, as a result of which Shri Shantilal Hematlal received his share of the immovable property and cash from the HUF. In the accounting year relevant to the assessment year 1976-77, Shri Shantilal Hematlal effected a partial partition of the HUF consisting of himself, his three minor sons, his wife and his daughter as regards the cash of Rs.1,91,000/-. As a result of this partial partition, Shri Shantilal Hematlal received a sum of Rs.39,000/- and his three sons also received a sum of Rs.39,000/-. His wife was given a sum of Rs.15,000/- and his daughter a sum of Rs.20,000/-. In other words, there was a partial partition as to cash of Rs.1,91,000/- lying with the HUF of Shri Shantilal Hematlal. Shri Shantilal Hematlal was also carrying on a separate business as a partner of the firm of Messrs Batavia Brothers. The amount of Rs.39,000/- received by him on partial partition was advanced by him in Assessment Year 1976-77 to Shri Shantilal Hematlal Individual and the same amount was invested by him in the firm of M/s Batavia Brothers in Assessment Year 1977-78 as his contribution of Capital. It was claimed before the Income Tax Officer that the sum of Rs.39,000/- which Shri Shantilal got as a result of partial partition partook the character of HUF and therefore, interest of Rs.8,160/- received on it was shown as income of HUF and deduction was claimed in Individual of Shri Shantilal in

Assessment Years 1976-77 and in Assessment Years 1977-78 the share income received from M/s Batavia Brothers on investment of this amount of Rs.39,000/- had the character of HUF.

6. From the facts stated above, it appears that the assessee effected a partial partition of the HUF consisting of himself, his three minor sons, his wife and his daughter as regards the cash of Rs.1,91,000/-. It is not clear from this fact whether the amount of Rs.1,91,000/- is the sole amount received on partial partition of the bigger HUF or whether it contains any of the amount of the smaller HUF also. When this fact is not clear, a further partition thereof amongst the members of the smaller HUF of the said amount and receipt of Rs.39,000/- by the assessee and the investment thereof in whatever manner and income thereof cannot be conclusively decided as to whether it partakes the character of personal income of the assessee or continues to be of bigger or smaller HUF of assessee as the result of amount received by him from the bigger or smaller HUF of the assessee. Therefore, when the character of Rs.1,90,000/- and Rs.39,000/- received by the assessee is not fully known, it is not possible for us to answer the questions referred to us.

7. In view of the above state of fact, we think it appropriate to decline to answer the questions and remand the matter back to the Tribunal to dispose of the same in accordance with after ascertaining relevant facts. We are supported in our view to remand the matter by a decision of the Supreme Court in the case of CIT Vs. Indian Molasses Co. P. Ltd (78 ITR 474).

8. Accordingly these References are ordered to be remanded back to the Tribunal for disposal of the same after ascertaining the relevant facts. It is hoped that the authority concerned will bear in mind the principles laid down in the following authorities cited at the bar, while it decides the matter.

1. C.W.T. Vs. Gordhanbhai Jethabhai Patel  
(203 ITR 706)

2. C.I.T. Vs. Ramanlal Nagindas Shah  
(195 ITR 9)

3. C.I.T. Vs. Harshvadan Mangaldas  
(194 ITR 136)

4. C.I.T. Vs. Parmanandas Mohanlal  
(208 ITR 5)

9. These References stand disposed of accordingly.  
Copy of this order be placed in each Reference.

\*\*\*\*\*